

Ethical Implications of Indiana's Public Access Laws

Presented by
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Public Access Counselor

- The Public Access Counselor provides advice and assistance concerning Indiana's public access laws (the Access to Public Records Act and the Open Door Law) to members of the public and government officials and employees.
- Governor Frank O'Bannon created the office by executive order in 1998 after a statewide collaboration of seven newspapers found great obstacles in obtaining government information in Indiana.
- In 1999, the General Assembly created the office statutorily.



2014-2015 Fiscal Year

Received 4,245 inquiries
317 Formal Complaints Filed
24 Informal Inquiries Filed

Opinions found at www.in.gov/pac



Access to Public Records Act (APRA)

- Indiana Code § 5-14-3-1 through 5-14-3-10
 - Enacted in 1983 (“APRA”)

A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master.

Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.

Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.

This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.”

The Indiana Open Door Law (ODL)

“...It is the intent of this chapter that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed...” IC 5-14-1.5-1.



Official Action vs. Final Action

- Official Action:
 - Discussions
 - Deliberations
 - Receiving Information
 - Giving Information
- Final Action:
 - Voting
 - Decisions



Executive Sessions

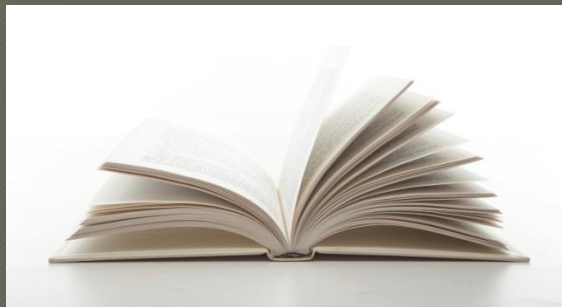
- The “exception” to meetings that are open to the public
- Notice must include statutory purpose(s) for the meeting excluding the public.
- Meeting minutes or memoranda must include **certification** that only the topics permitted under the ODL for executive session were discussed.
- NO FINAL ACTION



What is a Public Record

“Public record” means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

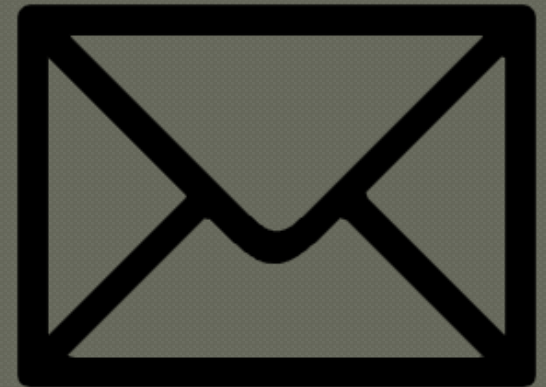
Indiana Code § 5-14-3-2(n)



Responding to APRA Requests

Time frames for responding to APRA Requests depends on the manner in which the public agency receives the request.

- If requestor is **physically present** in the office the agency has twenty-four (24) hours to respond
- If the request is made by **mail or by facsimile** the public agency has 7 days from the date it was received
- Important: Production of documents is not required in these time frames, but within a reasonable time.
- Copy fees



Reasonable Period of Time

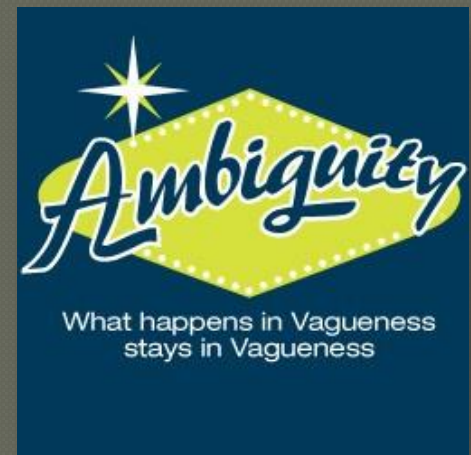
All records must be provided within a “reasonable period of time” after the request is received

- Factors considered:
 - How broad is the request
 - Where are the records located
 - How much redaction is necessary
 - Busy time at the agency
 - Common sense factors
- What I like to see:
 - Communication – Status Updates
 - Piecemeal disclosures



Reasonable Particularity

- A request from the public must be reasonably particular – a subjective standard
- Two conflicting cases
 - Can you find it?
 - Are there objective elements in the query?
- What I like to see:
 - No blanket denial
 - Cooperate to narrow request



Three Categories of Public Records



Must be disclosed



Confidential



Released at the discretion
of the public agency

Access to Public Records Act

Electronic Mail

- A public record is any record, including electronic media, that is created received, retained, maintained, or filed by or with a public agency.
- Electronic mail must be available for inspection and copying by the governing body unless an exception to disclosure, based on the content of the email, applies.
- Electronic mail must be maintained in accordance with records retention schedules, pursuant to I.C. 5-15.
 - Most agencies have their own retention schedules.



Noncompliance

- Remedies
 - Fix it
 - Complaint to Public Access Counselor
- Penalties
 - Court action seeking order to produce records and potentially order to pay attorney's fees
 - Fines for knowing and intentional withholding of public records or violation of the ODL
 - Bad press and damage to public perception



Thank You

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Public Access Handbook:

http://www.in.gov/pac/files/pac_handbook.pdf

Public Access Counselor Website:

<http://www.in.gov/pac/>